

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF	)	
LESTER A. DOW, DOW HOMES, INC.,	)	
and THAD E. WARDALL,	)	
	)	
Appellants,	)	PCHB No. 78-136
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION	)	AND ORDER
CONTROL AGENCY,	)	
	)	
Respondent.	)	

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Section 8.05(1) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on September 18, 1978. Hearing examiner William A. Harrison presided. Respondent elected an informal hearing pursuant to RCW 43.21B.230.

Appellants Dow Homes, Inc., Lester A. Dow and Thad E. Wardall appeared by and through Mr. Wardall. Respondent appeared by and through

WAE/DO

1 its attorney, Keith D. McGoffin. The proceedings were not recorded.

2 Witnesses were sworn and testified. Exhibits were examined. From  
3 testimony heard and exhibits examined, the Pollution Control Hearings  
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
8 a certified copy of its Regulation I containing respondent's regulations  
9 and amendments thereto of which official notice is taken.

10 II

11 Appellant, Thad E. Wardall, is a construction superintendent for  
12 the appellant, Dow Homes, Inc. In this case, Dow Homes, Inc. was  
13 carrying out its contract to construct multi-family housing near 7573  
14 Old Redmond Road, Redmond, Washington. Wardall decided that clean,  
15 untreated waste lumber generated by construction should be burned at  
16 the site. Consequently, a clerical employee of Dow Homes, Inc. was  
17 sent to the local (Redmond) fire department to obtain a burning permit.  
18 Following a discussion of the type of fire intended, a fire fighter of  
19 the Redmond Fire Department issued a burning permit entitled "General  
20 Burning Permit" which expressly authorized the burning of "untreated  
21 lumber". When asked if the air pollution agency should be notified before  
22 burning, the Redmond fire fighter replied that, "King County" Air Pollution  
23 Agency had no jurisdiction in the City of Redmond, and therefore no  
24 inquiry need be made. In fact, respondent is the Puget Sound Air  
25 Pollution Control Agency with jurisdiction in the cities and in  
26 unincorporated areas throughout Pierce, King, Snohomish and Kitsap

27 FINAL FINDINGS OF FACT,  
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1 Counties. There is no King County Air Pollution Control Agency.

2 III

3 Relying in good faith upon the fire department's written permit  
4 and upon the fire department's statement that no permit from the air  
5 pollution agency was needed, appellant Wardall ordered the outdoor  
6 burning of untreated waste lumber on the job site.

7 On May 8, 1978, an inspector for the Redmond Fire Department  
8 observed such fires, asked to examine the fire department's permit, and  
9 informed appellant Wardall that a mistake had been made in not requiring  
10 the approval of the air pollution agency. Wardall then ordered that  
11 fires on the site be allowed to burn down until the matter could be  
12 resolved.

13 While the fires were still in progress, Wardall called the  
14 respondent Puget Sound Air Pollution Control Agency and asked that a  
15 representative be sent to the site to resolve the question of whether  
16 respondent's prior approval was needed for the burning. At the arrival  
17 of respondent air agency's inspector, an employee of appellant was  
18 observed feeding one of the fires. In fact this action resulted from the  
19 misunderstanding of appellant Wardall's "burn-down" order by that  
20 particular employee who spoke and understood very little English, having  
21 recently arrived from Tonga. Acting on what he observed, respondent's  
22 inspector determined that no permit had been obtained from respondent  
23 and appellant later received, by mail, a formal Notice of Violation  
24 and Notice of Civil Penalty in the amount of \$250. Since this  
25 incident, waste lumber is being hauled from appellant's job sites.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

The principal regulation which controls the events of this case is respondent air agency's Section 8.05 of Regulation I. It states that:

It shall be unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning except under the following conditions:

(1) Prior written approval has been issued by the Control Officer or Board; and

(2) Burning is conducted at such times and under such conditions as may be established by the Control Officer or Board. (Emphasis added.)

It follows that appellants needed the prior written approval of respondent, Puget Sound Air Pollution Control Agency, before starting any outdoor fire that was not either for "land clearing" or "residential" purposes. These two exceptions are so narrowly defined that they do not apply in the facts of this case (nor would they in many other cases): "'Land clearing burning' means outdoor fires consisting of residue of a natural character . . . arising from land clearing projects . . . ." Section 1.07(rn), respondent's Regulation I. "Residential burning" is that which is conducted only by the resident of a single family residence. Section 8.09 of respondent's Regulation I. Appellants therefore violated respondent's Section 8.05 in failing to obtain respondent's

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1 prior written approval for the outdoor fires in question.

2 II

3 This Board, however, will not close its eyes to appellant's good  
4 faith attempt to comply with the law. The Legislature has provided  
5 that:

6 It shall be the responsibility and duty of the department of  
7 natural resources, department of ecology, fire districts and  
8 local air pollution control authorities to establish, through  
9 regulations, ordinances or policy, a limited burning program  
for the people of this state, consisting of a one-permit  
system . . . . (Emphasis added.) RCW 70.94.745.

10 In this instance, appellant's inquiry at the local fire department  
11 resulted in materially misleading information. Paragraph I of the  
12 fire department permit (A-3) plainly purports to authorize burning of  
13 untreated lumber, and does not restrict that authority to residential  
14 burning. Furthermore, while the same paragraph I refers to rules of  
15 the "Air Pollution Authority", appellant was told by the fire depart-  
16 ment, orally, that these were inapplicable. The fire department and  
17 the respondent air authority are statutory partners charged with  
18 developing an outdoor burning program for the people. Where, as here,  
19 appellant proceeded in good faith and was misled by the fire department,  
20 we will not sustain the resultant civil penalty imposed by the air  
21 authority. The civil penalty in this matter should therefore be  
22 entirely abated.

23 III

24 Any Finding of Fact which should be deemed a Conclusion of Law  
25 is hereby adopted as such.

26 From these Conclusions, the Board enters this

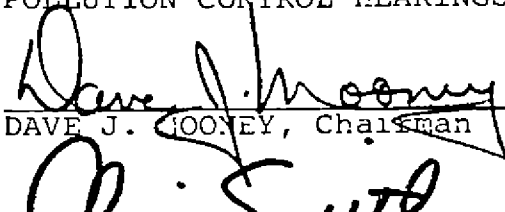
27 FINAL FINDINGS OF FACT,  
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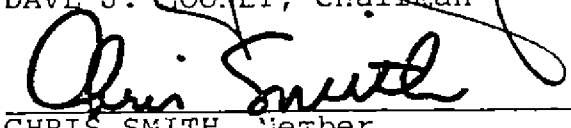
ORDER

The violation is affirmed, but the \$250 civil penalty is abated.

DONE at Lacey, Washington, this 3d day of October, 1978.

POLLUTION CONTROL HEARINGS BOARD

  
DAVE J. MOONEY, Chairman

  
CHRIS SMITH, Member

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